# National Labor Relations Board Weekly Summary of

**NLRB** Cases

W-3198

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Aramark Corp. (29-CA-28625; 353 NLRB No. 98) Philadelphia, PA and Long Island City, NY Feb. 26, 2009. The Board remanded the case to the administrative law judge for the purpose of issuing a second supplemental decision containing credibility resolutions, findings of fact, conclusions of law, and a recommended Order. The complaint alleged that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with requested information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective bargaining representative for the unit. The Board found that the judge's supplemental decision does not provide an adequate basis for review. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

Charge filed by UNITE HERE Local 100; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Brooklyn on April 29, 2008. Adm. Law Judge Howard Edelman issued his supplemental decision Aug. 27, 2008.

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Cardi Corp. (1-CA-43892; 353 NLRB No. 97) Warwick, RI Feb. 25, 2009. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally implementing a rule requiring that bargaining unit employees possess a valid driver's license as a condition of employment. The Board also agreed with the judge that the Respondent further violated 8(a)(1) and (5) by enforcing this rule against Eddie Mejia on Nov. 13, 2006 when Mejia sought to return to work following medical leave. However, the Board did not adopt the judge's recommended remedy ordering the Respondent to immediately reinstate Mejia as of Nov. 13, 2006. Rather, in light of testimony raising the question of whether unit work was available when Mejia sought to return to work, the Board left to compliance the issue of whether Mejia, if the Respondent had not unlawfully enforced its driver's license requirement against him, would have been immediately reinstated on or after Nov. 13, 2006, and the related issue of which party bears the burden of proof on the matter. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

Charge filed by Carpenters Local 94, New England Regional Council; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Boston on April 1, 2008. Adm. Law Judge Bruce D. Rosenstein issued his decision June 5, 2008.

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*Iberia Road Markings Corp.* (29-CA-27930, 29-RD-1070; 353 NLRB No. 101) Brooklyn, NY Feb. 27, 2009. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(3), (4) and (1) of the Act by discharging employee Alecc Ortiz because he filed a decertification petition with the Board. In adopting the judge's finding that Ortiz's discharge violated the Act, the Board found it unnecessary to rely on an adverse inference drawn by the judge from the Respondent's failure to adduce corroborative testimony from employee

Ray Dominguez concerning a phone conversation between Dominguez and Respondent's president and part owner Jose Freire that occurred shortly after Freire received the decertification petition. [HTML] [PDF]

The Board also adopted the judge's recommendations to overrule the challenges to the ballots of Ortiz, Miguel Freire and Danny Travers. It directed that those ballots, as well as that of Javier Figueira, be opened and counted. The challenge to the ballot of Figueira was overruled by the Regional Director in his earlier Report on Challenges.

(Chairman Liebman and Member Schaumber participated.)

Charges filed by Alecc Ortiz, an individual; complaint alleged violations of Section 8(a)(1), (3), and (4). Hearing at Brooklyn, Feb. 5-6, 2007. Adm. Law Judge Mindy E. Landow issued her decision May 18, 2007.

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Paint America Services, Inc., SRS Group, Inc., Paint America, Paint America, Inc., and Paint America of Michigan, Inc. (7-CA-47564; 353 NLRB No. 100) Saline, MI Feb. 25, 2009. In a backpay proceeding, the Board found that five entities owned by spouses constituted a single employer and were therefore jointly and severally liable for backpay. Applying its four-factor test for single-employer status, the Board agreed with the administrative law judge that the evidence demonstrated an interrelationship of operations, common management, and centralized control of labor relations, and that the ownership of the entities by spouses, with one spouse exercising control of key business decisions, also established common ownership. The Board further found that Respondent SRS was not denied due process when witnesses subpoenaed by the General Counsel were not present to testify as part of SRS' case after a 7 ½ week continuance and when the judge denied SRS' requests for a further continuance and discovery. The Board concluded that the judge complied with due process requirements and afforded SRS a fair opportunity to present its case. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

Adm. Law Judge John H. West issued his supplemental decision Sept. 29, 2008.

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Regency Heritage Nursing & Rehabilitation Center (22-CA-27992; 353 NLRB No. 103) Ewing, NJ Feb. 27, 2009. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) of the Act by refusing to deal with a designated union representative, as well as her finding that the case was not appropriate for deferral to arbitration. However, the Board reversed the judge's finding that the Respondent violated Section 8(a)(5) by unilaterally

terminating an established past practice of granting the Union access to the Respondent's facility. In this connection, the Board found that the General Counsel failed to adduce sufficient evidence of the existence of such a practice. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

Complaint filed by SEIU 1199, New Jersey Health Care Union; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Newark, March 19 and 28, 2008. Adm. Law Judge Mindy E. Landow issued her decision Nov. 3, 2008.

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Rockspring Development, Inc. (9-RC-17844; 353 NLRB No. 105) East Lynn, WV Feb. 27, 2009. This representation proceeding concerned the resolution of determinative challenged ballots of the chief electricians and safety coordinator employed by the Employer. The Board adopted the hearing officer's finding that the chief electricians are not supervisors under Section 2(11) of the Act, as interpreted in Oakwood Healthcare, 348 NLRB 686 (2006). Contrary to the hearing officer, the Board found that the safety coordinator was neither a statutory supervisor under Oakwood Healthcare, nor a managerial employee excluded from coverage under the Act. The Board accordingly directed that the Regional Director open and count the determinative challenged ballots of the chief electricians and safety coordinator, prepare a revised tally of ballots, and issue an appropriate certification. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

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Spectrum Health—Kent Community Campus (7-CA-50996, 51112; 353 NLRB No. 99) Grand Rapids, MI Feb. 26, 2009. The Board affirmed the administrative law judge's findings that the Respondent unlawfully withdrew recognition from the Union, violated Section 8(a)(5) and (1) and Section 8(d) of the Act by repudiating the collective bargaining agreement and unilaterally making changes to its terms, and violated Section 8(a)(1) by informing employees that the facility was nonunion. [HTML] [PDF]

On April 13, 2005, unit members ratified a successor contract to a 2002 contract. On the bottom of the cover page, the ratified contract stated, "Date of Agreement: Jan. 1, 2005 through March 31, 2008." The initial paragraph of the contract, entitled "Agreement," stated that the contract was "effective April 13, 2005." The contract paragraph entitled "Termination" stated, "This agreement shall remain in force until 12:01 a.m., April 1, 2008."

On Jan. 7, 2008, the Respondent received a petition from a majority of unit members stating that they no longer wished to be represented by the Union. The Respondent withdrew recognition because, based on the Jan. 1, 2005 date on the contract's cover, the petition was filed

after the expiration of the 3-year presumption of majority support. The General Counsel claimed that the contract term began on April 13, 2005—the "effective date" stated in the body of the contract. Thus, the General Counsel argued that the Respondent withdrew recognition during the 3-year presumption of majority support.

The judge found that the contract, with two conflicting start dates, was ambiguous on its face. Thus, the judge allowed the parties to introduce parol evidence to resolve the ambiguity. The evidence showed that the Respondent bargained for a 3-year contract beginning on the date of ratification, i.e., April 13, 2008. The judge found that the General Counsel met its burden and that the Respondent withdrew recognition before the 3-year presumption of majority support expired. The Board adopted the judge's findings and found the violations as alleged.

(Chairman Liebman and Member Schaumber participated.)

Charges filed by UAW Local 2600; complaint alleged violations of Section 8(a)(1) and (5) and Section 8(d). Hearing at Grand Rapids on June 10, 2008. Adm. Law Judge David I. Goldman issued his decision Sept. 4, 2008.

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*Vrable III, Inc., d/b/a Scenic Hills Nursing Center* (9-CA-44146, et al.; 353 NLRB No. 102) Bidwell, OH Feb. 27, 2009. The Board found that the Respondent had shown it would have discharged Amy Rupe for committing patient abuse even if she had not engaged in protected activity, and that the discharge was consequently lawful even assuming arguendo that the General Counsel had shown that the Respondent acted with anti-union animus. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

Charges filed by Health Care and Social Service Union, District 1199; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Gallipolis, Sept. 9-11, 2008. Adm. Law Judge Bruce D. Rosenstein issued his decision Nov. 14, 2008.

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#### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Printpack, Inc.* (Teamsters Local 662) Rhinelander, WI Feb. 24, 2009. 30-CA-16980, et al.; JD-10-09, Judge Mark D. Rubin.

*Elevator Constructors Local 131* (Individuals) Tempe, AZ Feb. 26, 2009. 28-CB-6737, et al.; JD(SF)-11-09, Judge William G. Kocol.

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#### NON-COMPLIANCE WITH SETTLEMENT AGREEMENT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's non-compliance with a settlement agreement.)

*Manhattan Health Clean/US Health Clean* (Individuals) (2-CA-37829, 38134; 353 NLRB No. 104) New York, NY Feb. 27, 2009. [HTML] [PDF]

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### LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

## DECISION AND DIRECTION [that Regional Director open and count ballot]

*Imagine Early Learning Center/Jamaica Kids*, Brooklyn, NY, 29-RC-11648, Feb. 27, 2009 (Chairman Liebman and Member Schaumber)

#### DECISION AND CERTIFICATION OF REPRESENTATIVE

*Lacosta, Inc.*, Deerfield, IL, 13-RC-21716, Feb. 23, 2009 (Chairman Liebman and Member Schaumber)

#### CORRECTED DECISION AND CERTIFICATION OF REPRESENTATIVE

*Eagle Ray Electric Co.*, Ellisville, MO, 14-RC-12739, Feb. 24, 2009 (Chairman Liebman and Member Schaumber)

# CORRECTION [substituting attached unpublished DECISION AND DIRECTION OF SECOND ELECTION for DECISION AND DIRECTION previously issued]

*Parsec, Inc.*, Elwood, IL, 13-RC-21767, Feb. 27, 2009 (Chairman Liebman and Member Schaumber)

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(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

# DECISION, ORDER [setting aside election conducted May 21 and May 22, 2008] AND DIRECTION OF SECOND ELECTION

St. Agnes Medical Center, Fresno, CA, 32-RC-5552, Feb. 24, 2009

#### DECISION AND CERTIFICATION OF REPRESENTATIVE

Ryder System, Inc., Burlington, KY, 09-RC-18224, Feb. 26, 2009

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

*Lacosta, Inc.*, Deerfield, IL, 13-RC-21716, Feb. 23, 2009 (Chairman Liebman and Member Schaumber)

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#### Miscellaneous Board Decisions and Orders

# CERTIFICATION OF REPRESENTATIVE AS BONA FIDE UNDER SECTION 7 (B) OF THE FAIR LABOR STANDARDS ACT OF 1938

City of Edwardsville, Edwardsville, IL, 14-WH-4, Feb. 24, 2009

**CORRECTED ORDER (denying Employer's request for special permission to appeal)** 

St. Barnabas Hospital, Bronx, NY, 2-RC-23365, Feb. 27, 2009

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